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12
13 UNITED STATES DISTRICT COURT

14 NORTHERN DISTRICT OF CALIFORNIA

15 SAN FRANCISCO DIVISION

16
17 GOOGLE LLC,

18 Plaintiff,

19 vs.

20 SONOS, INC.,

21 Defendant.

Case No. 3:20-cv-06754-WHA

Related to Case No. 3:21-cv-07559-WHA

**GOOGLE LLC'S OPPOSITION TO
SONOS'S MOTION TO STRIKE
PORTIONS OF GOOGLE'S
NONINFRINGEMENT AND
INVALIDITY EXPERT REPORTS**

Date: March 9, 2023

Time: 8:00 a.m.

Location: Courtroom 12, 19th Floor

Judge: Hon. William Alsup

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1 **I. INTRODUCTION**

2 Sonos's Motion to Strike (Dkt. No. 474-13, "Mot.") should be denied because Google timely
3 disclosed its invalidity, noninfringement, and non-infringing alternatives.

4 Sonos moves to strike certain opinions from Dr. Bhattacharjee. First, Sonos moves to Strike
5 Dr. Bhattacharjee's invalidity opinions regarding Google's prior art Tungsten/NexusQ and
6 YouTube Remote ("YTR") systems that show the infringing features that Sonos is accusing are
7 found in the Google prior art. But the theories that Sonos seeks to strike were disclosed more than
8 a year ago in Google's invalidity contentions, and Sonos is well aware of the functionalities in these
9 prior art systems as both were at issue during the patent showdown. Second, Sonos moves to strike
10 a large portion of Dr. Bhattacharjee's non-infringement opinions. But Google's discovery responses
11 disclose each of Google's non-infringement positions for the theories Sonos identified in its
12 infringement contentions. The only non-infringement positions not disclosed in Google's discovery
13 responses are those that respond to an entirely new theory that **Sonos** recently raised with respect to
14 Google's Hub Devices (and which is the subject of Google's pending Motion to Strike). Obviously
15 Google cannot be expected to disclose during fact discovery rebuttal non-infringement positions for
16 theories that Sonos did not introduce until opening expert reports. Third, Sonos moves to strike Dr.
17 Bhattacharjee's opinion regarding non-infringing alternatives. But the non-infringing alternatives
18 Sonos takes issue with were all disclosed in Google's discovery responses. Indeed, Sonos asked
19 Google witnesses about these alternatives during fact discovery.

20 Sonos also seeks to strike certain opinions from Dr. Schonfeld. First, Sonos asserts that
21 certain Bose prior art products were not adequately disclosed in Google's invalidity contentions.
22 But Google disclosed its theories based on the Bose Lifestyle product in its invalidity contentions,
23 including the usage of that product with Bose's amplifiers as Dr. Schonfeld opined in his expert
24 reports. Further, Google disclosed the very opinions Sonos is moving to strike in Dr. Schonfeld's
25 opening report for the patent showdown in June 2022, Sonos responded to them through its own
26 expert's rebuttal report, deposed Dr. Schonfeld regarding these opinions more than six months ago
27 in September 2022, and then deposed Dr. Schonfeld again on these same opinions again in February
28 2023. Sonos has been aware of the explicit opinions it moves to strike for eight months and many

1 months of discovery, and therefore any alleged inadequate disclosure is harmless. Second, Sonos
2 also argues that Dr. Schonfeld raises a new non-infringement theory regarding a “causing storage”
3 limitation for the independent claims of the ‘966 patent. But Google’s interrogatory responses
4 disclosed this theory for the independent claims, and Google then provided additional detail for this
5 argument with respect to the “storage” limitation in its interrogatory responses, albeit for dependent
6 claims. Regardless, the level of disclosure by Google in its rebuttal contention interrogatory
7 responses matches Sonos’s own disclosures and was sufficient. Third, Sonos claims that Dr.
8 Schonfeld is presenting a new non-infringing alternative. But the non-infringing alternative comes
9 directly from the construction of “zone scene” that the Court applied during the patent showdown,
10 and was disclosed in supplemental interrogatory responses Google provided after the Court
11 provided the zone scene construction.

12 **II. STATEMENT OF FACTS**

13 On October 21, 2021, Sonos served facially deficient infringement contentions that failed to
14 comply with Patent Local Rule 3-1. Google promptly notified Sonos that—among other issues—
15 its contentions accused vague, unidentified “[s]martphones, tablets, and computer devices,” “apps,”
16 “servers,” and “cloud-based infrastructure” in violation of the Patent Local Rule’s requirement that
17 accused products be specific by name or model number, that Sonos’s singular claim chart lumping
18 numerous devices and applications did not adequately identify Sonos’s infringement theory for *each*
19 of the accused instrumentalities, and that the chart had failed to provide the specific functionalities
20 it contended practiced each limitation. *See* Dkt. 86-3. After Google sought the Court’s assistance,
21 Sonos finally served supplemental contentions that purported to (but did not) fully resolve the
22 deficiencies. Since then, Sonos has moved to amend its infringement contentions *five* additional
23 times. *See* Dkts. 128, 150, 177, 407, 430. Sonos’s nebulous contentions and endless amendments
24 have made its infringement theories moving targets.

25 Despite its failure to put Google on proper notice, Sonos propounded its Interrogatory No.
26 12 that demanded Google “set forth in detail the complete legal and factual basis for any assertion
27
28

1 by Google that the Accused Instrumentalities have not infringed each [] claim[.]” Mot., Ex. J at 7.¹
 2 The interrogatory purported to cover four different patents (the ’906, ’885, ’615, and ’033 patents),
 3 tens of claims, numerous different applications (YouTube Main, YouTube Music, YouTube Kids,
 4 YouTube TV, Podcast, Spotify, and Google Home) running different versions of the application
 5 (iOS, Android, ChromeOS, etc.), and various accused features that were ill-defined in Sonos’s
 6 infringement contentions. Google objected that this request was overly broad and burdensome, and
 7 noted in its response that “Sonos’s infringement contentions are . . . incoherent, vague, and
 8 ambiguous, and it is accordingly difficult, if not impossible, for Google to understand Plaintiff’s
 9 theories of infringement.” *Id.* at 21. Nevertheless, Google did its best to identify the specific
 10 limitations that Sonos’s infringement contentions had failed to demonstrate were satisfied in the first
 11 instance. Google continued to provide supplemental responses with additional details and
 12 explanations as Sonos tacked on additional theories and amendments—most recently on November
 13 23, 2022, after Sonos moved to amend its contentions yet again. *See id.*; Dkt. 430.

14 Google served its Patent Local Rule 3-3 invalidity contentions on December 6, 2021.
 15 Declaration of Marc Kaplan (“Kaplan Decl.”) ¶ 2. Sonos exchanged communications with Google
 16 regarding these contentions throughout at least March 2022, yet never moved for any relief based
 17 on any alleged deficiencies. *Id.* In contrast to Google’s response to Sonos’s non-infringement
 18 contention interrogatory, Sonos responded to Google’s request for validity contentions by merely
 19 providing boilerplate responses that Google “failed to establish” that each piece of prior art
 20 “anticipates or renders obvious” a list of limitations. *See, e.g.* Ex. 2 (Attachment A) at 111-114. It
 21 was not until Sonos served its rebuttal expert reports (consisting of hundreds of pages) that it
 22 revealed its true validity positions for the first time.

23 **III. LEGAL STANDARD**

24 Courts in this district facing requests to strike expert opinions have recognized that “the
 25 Federal Circuit strongly encourages district courts to decide issues pertaining to invalidity when
 26 those issues have been presented to the court, particularly because patent invalidity has important
 27 _____

28 ¹ All cited exhibits are attached to the contemporaneously filed Declaration of Marc Kaplan.

public implications.” *See, e.g., Fresenius Medical Care Holdings, Inc. v. Baxter Intern., Inc.*, 2006 WL 1329997, at *7 (N.D. Cal. May 15, 2006) (denying motion to strike invalidity defenses). While “[t]he patent local rules require disclosure of specific invalidity theories,” they “do not compel disclosure of all evidence relevant to proof of those theories.” *Slot Speaker Techs., Inc. v. Apple, Inc.*, 2017 WL 235049, at *2 (N.D. Cal. Jan. 19, 2017).

“District courts have ‘wide discretion’ in enforcing the patent local rules.” *Id.* at *2. “In determining whether to strike some or all of an expert report for failure to comply with the patent local rules, courts [] have asked, ‘Will striking the report result in not just a trial, but an overall litigation, that is more fair, or less?’” *Huawei Techs., Co. v. Samsung Elecs. Co.*, 340 F. Supp. 3d 934, 946 (N.D. Cal. 2018) (quoting *Apple Inc. v. Samsung Elecs. Co.*, 2012 WL 2499929, at *1 (N.D. Cal. June 27, 2012)). “[I]n patent litigation, expert reports are expected to provide *more* information than is contained in infringement contentions.” *See Digital Reg of Tex., LLC v. Adobe Sys. Inc.*, 2014 WL 1653131, at * 5 (N.D. Cal. Apr. 24, 2014) (emphasis added).

IV. ARGUMENT

A. **Google Did Not Introduce New Invalidity Theories in Its Expert Reports**

1. Dr. Bhattacharjee Did Not Introduce New Anticipation Theories For The Tungsten/NexusQ And YTR Prior Art

Sonos claims that Google raises two new anticipation theories based on: [1] “the ‘Magic Playlist’ feature of the Tungsten/Nexus Q system” (Mot. at 6) and [2] the list of service-recommended videos provided by the YouTube Cloud servers (Mot. at 7). Sonos is mistaken – neither of these theories is “new,” and Google adequately put Sonos on notice of these theories.

(a) *Google Did Not Introduce A New Theory For Tungsten/NexusQ*

For purposes of infringement, Sonos identifies a cloud-hosted playlist provided by the “YouTube cloud infrastructure” of being the “remote playback queue provided by a cloud-based system” recited in the asserted claims of the ’033 patent. Ex. 4 at 18 (accusing “an album, user-created playlist, service-provided playlist”), 21-23, 26-27; Dkt. No. 467-4, ¶¶ 128-129, 235. Google’s expert, Dr. Bhattacharjee, showed that the prior art Tungsten/NexusQ was also “able to playback playlists that were generated and stored in the cloud, for example album playlists (*e.g.*,

AC/DC Back in Black) or a MagicPlaylist containing a list of recommended songs generated by a server.” Mot., Ex. A ¶¶ 218-20. Dr. Bhattacharjee thus opined that the Tungsten/NexusQ system invalidates the asserted claims based on Sonos’s infringement contentions.

This theory in Dr. Bhattacharjee’s report is clearly articulated in Google’s Invalidity Contentions. For example, Google disclosed that the Tungsten/NexusQ system “anticipate[s]” the asserted claims “of the ’033 patent under at least the interpretation that [Sonos] appears to rely upon for its infringement theories.” Ex. 6 at 56. Google also provided claim charts for the Tungsten/NexusQ disclosing its theory that the system played back a “remote playback queue” when a user selects playlists stored and generated on Google cloud servers for playback. Mot., Ex. K.²

For example, Google’s charts explain that the Tungsten/NexusQ system allowed users to “pull the music directly from the music library in the cloud” and pointed to illustrations (such as the one on the right) showing users



selecting cloud-hosted playlists for playback. *Id.* at 9-10, 12-13. A “MagicPlaylist” is simply the name of a type of cloud-hosted playlist in the Tungsten/NexusQ. Mot., Ex. A ¶¶ 218-20.

(b) Google Did Not Introduce A New Theory For The YTR

Sonos does not dispute that Google disclosed that the YTR prior art receives a list of recommended videos provided by the YouTube servers, but argues that Google somehow limited its invalidity theory to playing back those videos by adding them to the Queue tab of the YTR application using a “+” icon next to each video (what Sonos refers to in its Motion as “manually-driven playback”). Mot. at 7.³ Sonos wrongly claims that Google did not disclose a theory in which videos are played back directly from other tabs (what Sonos calls “automatic playback”), such as


² Google provided a demonstration of its “Tungsten” system in May of 2011, and ultimately released the Tungsten system commercially as the “NexusQ” in 2012. Google’s invalidity contentions provided a chart for the May 2011 Tungsten demonstration (Mot., Ex. K), and a separate chart for the commercially released NexusQ.

³ The prior art YTR application displayed tabs from which a user could playback a list of videos. For instance, a “Queue” tab displayed the user-editable queue containing the videos a user had added using the “+” icon that appears next to videos. Other tabs, such as the “Recommended” and “Search” tabs, contained a list of service-recommended videos received by the YouTube servers.

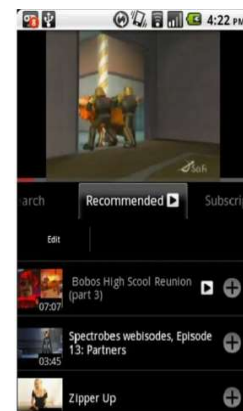
1 the Recommended or Search tabs. Mot. at 7.⁴ Not so.

2 Google's invalidity contentions disclosed the ability to playback videos without having to
3 add them to the Queue tab using the "+" icon. Indeed, the image from Dr. Bhattacharjee's report



4 that Sonos takes issue with in its Motion (reproduced on the left) is in Google's
5 invalidity contentions. Mot. at 7 (citing Mot., Ex. C ¶ 79); Cf. Mot., Ex. L at
6 11.⁵ This image shows a user playing the video "Nature Photography –
7 Sandhill Cranes" within the "Search" tab, as evidenced by the text "Now
8 playing from Search: nature photo..." displayed below the video and the  icons within the Search tab (not the Queue tab). Mot. at 7 (citing YTR Chart

9 at 5-6); *see also* Mot., Ex. L at 11. Sonos nevertheless points to a different portion of Google's
10 invalidity contentions that includes an excerpt from a website stating the YTR was able to "kick"
11 (*i.e.*, transfer) a queue of videos to the "big screen" (*i.e.*, a television or
12 monitor) for playback. *See* Mot. at 7. Nothing in the excerpt suggests that
13 Google's theories were limited to playback of a queue of videos in the Queue
14 tab, as opposed to a queue of videos in the Recommended or Search tab. To
15 the contrary, the image (reproduced on the right) that immediately follows the
16 excerpt in Google's invalidity contentions—which Sonos omits from its
17 Motion—shows a YTR application playing back a video ("Bobos High School Reunion (part 3)")
18 from the "Recommended" tab. Mot., Ex. L at 7.



19 Sonos's attempt to strike this theory may be motivated by the fact that its expert provided
20 technically inaccurate opinions when trying to distinguish Sonos's accusations against playback of
21 recommended videos in the current YouTube applications from playback of recommended videos
22

23
24 ⁴ The YTR application displayed various tabs from which a user could play back a list of videos.
25 For instance, a "Queue" tab displayed the user-editable queue containing the videos a user had added
26 using the "+" icon that appears next to videos. Other tabs, such as the "Recommended" and
27 "Search" tabs, contained a list of service-recommended videos received by the YouTube servers.

28 ⁵ To the extent Sonos's citation to Dr. Bhattacharjee's reply report is intended to suggest that Dr.
Bhattacharjee first introduced this image or theory in his reply report, that is inaccurate. Indeed, the
image appears in Dr. Bhattacharjee's opening report, along with his discussion of playing back a
list of recommended videos provided by the YouTube cloud servers. Ex. 5 (Bhattacharjee Op. Rpt.)
¶¶ 271, 298-299.

1 in the YTR prior art. In particular, Sonos’s expert opined that playback of recommended videos in
 2 the YTR was different because users of the YTR prior art were unable to play back videos without
 3 using first using the “+” icon to add them to their Queue tab. *See e.g.*, Ex. 9 ¶ 171 (“whether a user
 4 finds a video on his or her own, or that video is recommended to the user, the user must affirmatively
 5 select the video for play back by choosing to add it to the local playback queue on the remote
 6 control.”), ¶ 328 (“In order for any recommended videos to be played back by a remote control, a
 7 user would have to add such videos to the local playback queue on the remote control. This is
 8 evidenced by the “+” icon that appears next to a recommended video.”). Dr. Bhattacharjee
 9 conclusively showed that this opinion from Sonos’s expert was inaccurate. *See Mot.*, Ex. C ¶¶ 79-
 10 81. Sonos is now trying to muddy the waters regarding Google’s invalidity theories by claiming
 11 that Dr. Bhattacharjee’s opinion is new.

12 (c) Sonos’s Case Law Citations Are Inapposite

13 Sonos’s citations to *MediaTek Inc. v. Freescale Semiconductor, Inc.*, 2014 WL 690161
 14 (N.D. Cal. Feb. 21, 2014) and *Largan Precision Co., Ltd. v. Genius Elec. Optical Co., Ltd.*, 2014
 15 WL 6882275, at *3-5 (N.D. Cal. Dec. 5, 2014) are inapposite. In fact, both cases suggest that
 16 Sonos’s request should be denied.

17 In *Mediatek*, the Court struck an invalidity theory in the defendant’s expert’s rebuttal report
 18 based on a previously undisclosed prior art reference (“Okazawa”) because “[n]either [defendant’s]
 19 Local Rule 3–3 contentions, nor even [the expert’s] Opening Report, mentioned the Okazawa
 20 reference.” *Mediatek*, 2014 WL 690161, at *1-2. But here, it is undisputed that Google disclosed
 21 both the Tungsten/NexusQ system and YTR prior art in its invalidity contentions. In fact, *Mediatek*
 22 actually supports Google’s position. The plaintiff in *Mediatek* also sought to strike invalidity
 23 theories in the defendant’s expert report that relied upon figures from a user manual, but the Court
 24 denied the request because those figures were cited in the defendant’s invalidity charts. *Id.* at *3.
 25 Given that Google’s invalidity contentions clearly disclosed its theory [1] that the Tungsten/NexusQ
 26 system played back cloud-hosted playlists and [2] that the YTR system played back a list of
 27 recommended videos, the Court should similarly deny Sonos’s motion to strike.

28 In *Largan*, plaintiff moved to strike an obviousness theory in the defendant’s expert report

1 that certain claimed conditions would have been “immediately apparent to one of ordinary skill in
 2 the art” based on certain disclosures in the “Park ’665” reference. *Largan*, 2014 WL 6882275, at
 3 *5. The Court found that Defendant’s invalidity contentions did not contain “this theory, nor
 4 anything like it,” nor did they identify the disclosures in Park ’665 that Defendants’ expert attempted
 5 to rely upon. *Largan*, 2014 WL 11394510 (Plaintiff’s Motion to Strike) at Section IV.C.5-6. Here,
 6 in contrast, Dr. Bhattacharjee is relying upon the theories that were disclosed in Google’s invalidity
 7 contentions. Like *Mediatek*, *Largan* also counsels against granting Sonos’s motion to strike.
 8 Indeed, the court denied plaintiff’s request to strike evidence of a properly disclosed obviousness
 9 theory because “[t]o the extent Dr. Barbastathis now presents additional explanation as to why the
 10 language cited in the invalidity contentions, in his opinion, renders obvious the claimed TTL range,
 11 that is consistent with the fact that *expert reports are meant to provide more detail* than
 12 contentions.” *Id.* at *7 (emphasis added). Here too, Dr. Bhattacharjee’s expert report at most
 13 provides additional explanation regarding how the cloud-hosted playlists in the Tungsten/NexusQ
 14 and the list of recommended videos in the YTR disclose the asserted claims.

15 2. Dr. Schonfeld’s Bose Opinions Were Previously and Timely Disclosed

16 Sonos concedes that it has been on notice of Google’s and Dr. Schonfeld’s reliance on Bose
 17 prior art speakers to show the invalidity of the asserted claims, but Sonos now complains that certain
 18 Bose products were not adequately disclosed during discovery. Mot. at 9. As a preliminary matter,
 19 this is incorrect. On June 6, 2022, *nearly eight months ago*, Google served Dr. Schonfeld’s opening
 20 report on invalidity for the patent showdown, where he provided dozens of pages of analysis
 21 regarding the Bose prior art products (Ex. 11 ¶¶ 619-722)—including the Bose Link communication
 22 protocol (*e.g.*, *id.* ¶¶ 635, 653, 679, 699) and the Lifestyle SA-2 and SA-3 Stereo Amplifiers (*id.* ¶¶
 23 633-635, 649, 677-78)—the very prior art references that Sonos asserts are new. Mot. at 9.
 24 Moreover, Google served Sonos with all the documents produced by Bose, including the ones Sonos
 25 now complains of, nearly a year and a half ago on September 30, 2021. Kaplan Decl. ¶ 3.

26 Further, Dr. Schonfeld’s invalidity theories merely expanded on the theories disclosed in
 27 Google’s contentions. Those contentions cited to documents showing that the Lifestyle 50 system
 28 may be “*connected via an SA-1 indoor amplifier*,”—*i.e.*, the direct predecessor amplifier product

1 to the SA-2 and SA-3 amplifier products that Sonos carefully claimed were “nowhere mention[ed]”
2 in Google’s contentions. [http://www.audioreview.com/product/other/mini-systems/bose/lifestyle-](http://www.audioreview.com/product/other/mini-systems/bose/lifestyle-50.html)
3 [50.html](http://www.audioreview.com/product/other/mini-systems/bose/lifestyle-50.html) (cited on page 1 of the 885-7 chart exhibit). Sonos was aware that users could connect the
4 Lifestyle 50 audio product to Bose amplifiers, and Sonos’s new argument that it would not have
5 been obvious for a person of skill in the art using the LifeStyle 50 to look to the next generation of
6 Bose’s own amplifiers (which were also prior art), or at the very least to use the teachings of that
7 next generation amplifier, is meritless. Google’s invalidity theory—that a person of skill in the art
8 would be familiar with the Lifestyle 50 and its ability to connect to amplifiers—was adequately
9 disclosed in Google’s contentions.

10 Nor was there ever any ambiguity regarding the theories that Dr. Schonfeld disclosed.
11 Indeed, Sonos took Dr. Schonfeld’s deposition on the opinions in this report *twice*, and the parties
12 were only weeks away from the patent showdown trial, where Dr. Schonfeld would have presented
13 these theories, before it was canceled. Dkt 339. During his August 31, 2022 deposition, Dr.
14 Schonfeld testified regarding the different components and references he was relying upon as a part
15 of his obviousness analysis. Ex. 12 at 241:18-242:12. If Sonos believed that certain Bose-related
16 theories disclosed in Dr. Schonfeld’s report were missing from Google’s invalidity contentions,
17 Sonos could have raised the issue at any time thereafter. It presumably did not do so because Google
18 could then simply have requested leave to amend its contentions—a process Sonos took advantage
19 of five times for its infringement contentions. *See supra* § II. In fact, even during his second
20 deposition on February 3, 2023 (taken *after* Sonos filed its motion to strike), Sonos spent less than
21 ten minutes of a seven-hour deposition regarding Dr. Schonfeld’s Bose opinions and did not
22 question him regarding any alleged discrepancies between Google’s invalidity contentions and his
23 report (and in response to which he could have readily explained how they were consistent). Ex. 13
24 at 120:5-12.

25 Not only was Sonos aware of Google’s contentions and Dr. Schonfeld’s use of the Bose
26 references, but Sonos never previously objected despite having Google’s theories of invalidity for
27 nearly a year. Instead, Sonos chose to sit on its hands for eight months while knowing that it would
28 later seek to strike these theories. Sonos attempted this same maneuver during the patent showdown,

1 and the Court correctly rejected it. *See* Dkt. 315 at 9 (“the problem with Sonos’s motion lies in the
 2 fact that it had notice that Google did not plan to amend its contentions on this point as of March 2
 3 []). Sonos then strategically chose not to initiate motion practice on this issue until April 21, fifty
 4 days after Google’s March 2 letter.”). The Court should do the same here.

5 Sonos’s decision to delay is all the more egregious because Dr. Schonfeld’s invalidity
 6 theories disclosed in June 2022 are substantively and in many instances exactly identical to the
 7 theories that he offered in his latest expert report. *E.g., compare* Ex. 11 ¶¶ 149-163, 619-632 with
 8 Ex. 14 ¶¶ 218-232, 855-862. Google’s invalidity contentions regarding Bose have never changed:
 9 the Bose Lifestyle System renders the claims of the asserted patents obvious. *See* Ex. 6; Ex. 7. As
 10 Sonos concedes, the foundation of Dr. Schonfeld’s analysis is the Bose LifeStyle, and he simply
 11 uses the related Bose products to bolster his analysis. Mot. at 9. In fact, Sonos does not contend
 12 that Dr. Schonfeld ever solely relies on these secondary Bose references as the basis for any claim
 13 limitation being met. *Id.* at 9-10. Rather, Sonos complains that Dr. Schonfeld included additional
 14 **evidence** allegedly not contained in Google’s invalidity contentions—an argument that misses the
 15 mark. *Id.* The law is clear, that Google was not required to disclose “all evidence relevant to proof
 16 of these theories” and that “expert reports are expected to provide more information” than a party’s
 17 contentions. *Slot Speaker Techs.*, 2017 WL 235049, at *2; *Digital Reg of Tex., LLC*, 2014 WL
 18 1653131, at *5. Regardless, Dr. Almeroth—Sonos’s technical expert—already addressed these
 19 Bose prior art products in both of his expert reports, rendering any purported nondisclosure
 20 harmless. *See* Ex. 15 ¶¶ 215-250, 748-964; Ex. 16 ¶¶ 348-408, 1249-1557.

21 Sonos’s motion also attempts to pivot to a **substantive** argument regarding the connection
 22 between and amongst various Bose products. Mot. at 9-10. Specifically, Sonos contends that the
 23 secondary Bose references should be stricken from Dr. Schonfeld’s report because “there is little
 24 discernible connection between the previously disclosed Bose Lifestyle system, and the newly
 25 disclosed communication protocol and amplifiers[.]” *Id.* at 10. Preliminarily, Sonos’s substantive
 26 arguments are irrelevant to its motion to strike, which seeks relief based on procedural issues. If
 27 Sonos believed there was no genuine issue of material fact that a person of skill in the art would
 28 have combined these references, it should have moved for summary judgment. But even if it had

done so, Sonos would have been unsuccessful since Dr. Schonfeld provided a robust motivation-to-combine analysis in his expert reports illustrating why a person having ordinary skill in the art would have combined these products. Ex. 14 ¶¶ 910-927. Sonos’s argument is also illogical as it essentially relies on the (incorrect) notion that a person of skill in the art familiar with Bose’s speaker products would not look to other Bose speaker products to create an obvious modification to the features of that product, where doing so would show a reasonable expectation of success.

Sonos’s repeated citation to *Largan* is again inapposite. As mentioned above, the *Largan* court struck an entirely new obviousness theory in the defendant’s expert report, while refusing to strike a properly disclosed obviousness theory in which the defendant’s expert provided more detail than the invalidity contentions. *See supra* § IV.A.I(iii). Here, Dr. Schonfeld relies upon the same theories—*e.g.*, Bose—disclosed in Google’s invalidity contentions. At most, Dr. Schonfeld’s expert report simply provides additional explanation regarding why Bose invalidates the asserted patents.

B. Google Did Not Introduce New Noninfringement Theories

Sonos’s Motion should be denied because Google’s responses to Sonos’s interrogatories disclose its noninfringement theories for the various theories that Sonos identified in its infringement contentions. Sonos never took issue with those responses, and has no basis to do so now.

This Court should also deny Sonos’s Motion for a second independent reason: the level of disclosure that Google provided in its contention interrogatory responses, which Sonos claims are deficient, was far more fulsome than what Sonos provided. In this case, Google served Sonos with its Interrogatory No. 3 seeking Sonos’s validity contentions. Sonos initially refused to provide an answer because “Google has the burden to prov[e] that the patents-in-suit are invalid.” Ex. 17. When Sonos finally agreed to serve a response, it provided only boilerplate language for the limitations that simply parroted back the claim language. For example, the image on the right is representative of Sonos’s response for each prior art reference. *See, e.g.*, Ex. 2 (Attachment A) at 111-14.

For instance, Google has failed to establish that the “Nexus Q System” anticipates or renders obvious at least the following limitations of the ‘033 Patent:

- [1.3]/[12.1] [operating in a first mode in which the computing device is configured for playback of a remote playback queue provided by a cloud-based computing system associated with a cloud-based media service]
 - at least because Google has failed to establish that the “Nexus Q System” embodied “operating in a first mode in which the computing device is configured for playback of a remote playback queue provided by a cloud-based computing system associated with a cloud-based media service.”

1 In contrast, when Sonos served Interrogatory No. 12—seeking non-infringement positions
 2 and other information regarding four different patents (the '906, '885, '615, and '033 patents),
 3 numerous different applications (YouTube Main, YouTube Music, YouTube Kids, YouTube TV,
 4 Podcast, Spotify, and Google Home) running different versions of the application (iOS, Android,
 5 ChromeOS, etc.) that have countless different playback paths—most of which were ill-defined in
 6 Sonos's infringement contentions (*e.g.*, user playlists, album playlists, playback with Autoplay,
 7 playback on a Hub Device, playback on a Hub Device, etc.)—Google provided Sonos with answers
 8 that went above and beyond what Sonos provided Google. Indeed, Google's initial response, like
 9 Sonos's validity contentions, identified the claim limitations for which Sonos had not met its burden
 10 to show infringement. *Mot.*, Ex. J at 7-21. As Google learned more about Sonos's infringement
 11 theories and the manner in which it was interpreting the claims, Google continued to supplement its
 12 response to provide additional details. *Id.* at 22-63.

13 Discovery is a two-way street. Sonos, having provided nothing but the barest validity
 14 contentions (which Sonos then turned into hundreds of pages of expert reports containing entirely
 15 new, undisclosed opinions), should not be allowed to complain about Google's contentions—which
 16 did in fact disclose Google's non-infringement theories.

17 1. Dr. Bhattacharjee Non-Infringement Theories Were Previously Disclosed

18 Sonos contends that Dr. Bhattacharjee's rebuttal report introduces five new non-
 19 infringement theories that were not disclosed during discovery. Sonos's contention is without merit.

20 (a) *Google Timely Disclosed Its Non-Infringement Positions For*
 21 *Limitation 1.7*

22 Limitation 1.7 recites: "based on receiving the user input, transmitting an instruction for the
 23 at least one given playback device to take over responsibility for playback of the remote playback
 24 queue from the computing device, wherein the instruction configures the at least one given playback
 25 device to (i) communicate with the cloud-based computing system in order to obtain data identifying
 26 a next one or more media items that are in the remote playback queue, (ii) use the obtained data to
 27 retrieve at least one media item in the remote playback queue from the cloud-based media service;
 28 and (iii) play back the retrieved at least one media item." Google's response to Sonos's

Interrogatory No. 12 states that the accused YouTube systems do not satisfy Limitation 1.7, and discloses the two non-infringement theories that Sonos wrongly contends were introduced for the “first time” in Dr. Bhattacharjee’s rebuttal report, as discussed below. Mot., Ex. J at 47-48.

First, Dr. Bhattacharjee’s rebuttal report showed that the accused YouTube applications do not satisfy Limitation 1.7 because what Sonos accuses of being an instruction (a “setPlaylist message”) that is sent from a “computing device” (e.g., a mobile device running the accused YouTube applications) is “not even received by the playback device,” as required by Limitation 1.7. Mot., Ex. B ¶¶ 213-15. He explains that the setPlaylist message is instead “received by the MDx server.” *Id.* ¶ 213. He also explains that the MDx server sends a setPlaylist message to a playback device, but that this setPlaylist message cannot be an instruction sent from the computing device, as required by Limitation 1.7, because it “is not the same setPlaylist message” that was sent by computing device. *Id.* ¶ 215. Sonos argues this theory is new. Mot. at 11. It is not.

Google’s response to Sonos’s Interrogatory No. 12 disclosed this theory. Google explained that the “setPlaylist message” sent from a mobile device running the accused YouTube applications does not satisfy Limitation 1.7 because it is received by “one or more MDx servers,” not the playback device. Mot., Ex. J at 47. The interrogatory response also explained that “[t]he MDx servers [] generate a further setPlaylist message requesting the screen to start playing the video identified by the videoId from the currentTime,” such that the setPlaylist message received by the playback device is sent from “the MDx server, not the alleged computing device.” *Id.* at 47-48. The interrogatory response also pointed Sonos to a document entitled “MDx Communication Protocol v3 Differences,” which discloses that the parameters in a setPlaylist message sent by a “Remote [i.e., YouTube application] to [the MDx] Server” (at -62) are different than those in a setPlaylist message sent by the “[MDx] Server to [a] Screen [i.e., a playback device]” (at -57). *Id.*

Further, Google response to Sonos’s Interrogatory No. 15 provided even more details in support of Google’s non-infringement positions. In its response to Interrogatory No. 15 Google again stated that a setPlaylist sent by the MDx server to a playback device is different from the setPlaylist message sent by the mobile device running the accused YouTube applications. *See e.g.*, Ex. 20 at 16 (“The MDx server then generates ***another*** setPlaylist message that it sends to the

1 receiver device.”) (emphasis added). This interrogatory response also cited to the specific source
 2 code that the MDx server uses to process the setPlaylist message received from the mobile device
 3 and to generate a new setPlaylist message to send to the playback device, which is the code Dr.
 4 Bhattacharjee also relies upon. *Id.* at 16-17 (citing **RealLoungeSessionManager.java** and
 5 **loungeadapter.ts**); Mot., Ex. B ¶¶ 82-85 (same).

6 **Second**, Dr. Bhattacharjee explained that even if the setPlaylist message could be the
 7 claimed “instruction,” it still does not satisfy Limitation 1.7 of the ’033 patent because the setPlaylist
 8 message does not configure the playback device to “(i) communicate with the cloud-based
 9 computing system in order to obtain data identifying a next one or more media items that are in the
 10 remote playback queue, (ii) use the obtained data to retrieve at least one media item in the remote
 11 playback queue from the cloud-based media service; and (iii) play back the retrieved at least one
 12 media item.” Mot., Ex. ¶¶ 222-25. More specifically, Dr. Bhattacharjee explained that the ’033
 13 patent contemplates a simplistic two-step process in which a playback device obtains a URL, and
 14 uses it (step (ii)) to retrieve a media item for playback (step (iii)). *Id.* ¶ 224. Dr. Bhattacharjee
 15 showed that the accused YouTube systems use a more complex process in which a setPlaylist
 16 message causes a playback device to obtain a videoId for a song or video (not a URL). *Id.*
 17 (Bhattacharjee Reb. Rpt.) ¶ 223. Dr. Bhattacharjee went on to explain that the videoId is not data
 18 that can be used to retrieve a media item for playback (as required by steps (ii)-(iii)), and that the
 19 playback device must instead make additional requests to obtain one or more “Bandaids URLs” that
 20 can be used to retrieve the media item. *Id.*

21 Sonos argues that this is a new theory. Mot. at 12. But this theory was disclosed in Google’s
 22 response to Sonos’s Interrogatory No. 12. For example, this interrogatory response explained that
 23 the setPlaylist message received by the playback device (“whether from the computing device or
 24 the MDx server”) does not configure the playback device to perform steps (i)-(iii) of Limitation 1.7.
 25 Mot., Ex. J at 48. The response then explained the basis for this statement, namely that “there are
 26 multiple API requests and messages that occur after the setPlaylist request between the server and
 27 the cast receiver to obtain data to play back from the alleged remote playback queue.” *Id.*

28 Dr. Bhattacharjee’s expert report simply provides additional explanation regarding the

multiple requests and messages “that occur after the setPlaylist request between the server and the cast receiver to obtain data to play back from the alleged remote playback queue.” Mot., Ex. B ¶¶ 222-25. But even this description is not new. For example, Google’s response to Sonos’s Interrogatory No. 14 explains that receiving a setPlaylist message at the “receiver device” (*i.e.*, playback device) causes the receiver device to obtain a videoId. Ex. 20 at 17. It further explains that the videoId is not used to retrieve the next media item, and that instead a playback device must send a further request (called a “GetPlayer request”) to obtain “Bandaids URLs” that can then be used to request the next “media item.” *Id.* Sonos also questioned Google witnesses at length about this process in deposition (*see, e.g.*, Ex. 8 at 85:3-94:11, 113:15-115:7) and the process was also at issue during the patent showdown (Ex. 21 ¶¶ 103-08). In fact, certain of the paragraphs that Sonos now moves to strike are substantially the same as those found in Dr. Bhattacharjee’s previous patent showdown report. Mot. at 12 (identifying Ex. B ¶¶ 106-08); *cf.* Ex. 21 ¶¶ 96-98.

In its Motion, Sonos also identifies paragraph 296-297 of Dr. Bhattacharjee’s rebuttal report in the paragraphs that it seeks to strike. Mot. at 12 (identifying Ex. B ¶¶ 296-97). These paragraphs relate to one of Google’s non-infringing alternatives: Onesie. Sonos claims that Interrogatory No. 12 failed to disclose the non-infringement argument for Google’s non-infringing alternative that is in these paragraphs. *Id.* (citing Ex. J). But Interrogatory No. 12 is directed to the “Accused Instrumentalities”—it does not seek information about non-infringing alternatives. Mot., Ex. J at 7. Google disclosed its non-infringing alternatives and the reasons they do not infringe in other interrogatory responses (*see infra* § IV.C.1), and paragraphs 296-97 of Dr. Bhattacharjee’s rebuttal report responds to arguments that Sonos raised for the first time in its expert reports claiming those non-infringing alternatives still infringe.

(b) *Google Timely disclosed Its Non-Infringement Positions For The “Remote Playback Queue” Limitations.*

The asserted claims of the ’033 patent require that the computing device (*e.g.*, a mobile device running the accused YouTube applications) be configured for playback of “a remote playback queue provided by a cloud-based computing system” (Limitation 1.4) and that playback responsibility for “the remote playback queue” be transferred to the playback device (Limitation

1 1.7). This Court previously found that the accused YouTube systems play back a cloud queue (also
 2 called a “Shared Queue,” “Remote Queue,” or RQ) after a computing device transfers playback
 3 responsibility to a playback device. Ex. 19 ¶¶ 182-185; *see also* Dkt. No. 210-3 (Showdown
 4 Declaration) ¶¶ 49-50, 52, 58, 65, 73, 81; Dkt. No. 316 at 9-10. Dr. Bhattacharjee does not dispute
 5 that the accused YouTube systems play back the cloud queue after playback is transferred from a
 6 computing device to playback device, but showed that a computing device is not configured for
 7 playback of the cloud queue prior to transfer, as required by Limitation 1.4.

8 Sonos’s claim that this is a new theory is wrong. Mot. at 12. For example, Google’s
 9 Interrogatory No. 12 explained that “when playing back media on the alleged ‘computing device,’
 10 [an] accused YouTube application plays back a local queue stored on the computing device,” such
 11 that “Sonos has failed to show that the accused YouTube application infringes the ‘remote playback
 12 queue’ limitations that require playback of the remote playback queue on the computing device.”
 13 Mot., Ex. J at 60. Google’s response to Sonos’s Interrogatory No. 15—which is “incorporate[d] by
 14 reference” in Google’s response to Interrogatory No. 12 (Mot., Ex. J at 60)—also provided a detailed
 15 example showing that an accused Pixel Device running a YouTube Music application is configured
 16 for playback of a playback queue that is “maintain[ed] locally” on a user’s mobile phone, not a
 17 “remote playback queue.” Ex. 20 at 14 (citing `DefaultPlaybackQueue.java` and explaining that it
 18 stores user-selected and recommended media items “locally on the Pixel Device as Android
 19 `SparseArrays`.”). Google’s response also explained that in the example “[t]here is not a ‘remote
 20 playback queue” that the computing device is configured to playback. *Id.* at 15. Thus, this response
 21 discloses Google’s theory that a computing device is not configured for playback of the cloud queue
 22 (the Shared Queue). Ex. 10 (“The Queue”) at -99 (stating that prior to casting “the queue is a client-
 23 side construct,” whereas “the Casting case stores the queue in YouTube servers as a ‘Remote Queue’”).

24 Sonos also takes issue with Dr. Bhattacharjee’s interpretation of the claim language as
 25 requiring that the “remote playback queue” in Limitation 1.4 refer to the same “remote playback
 26 queue” in Limitation 1.7. Mot. at 12. This is not a new opinion; it is a well-settled aspect of
 27 interpreting claim language. Where a claim introduces an element with the letter “a,” the
 28 presumption is that later references to “the” element carry the same meaning. *X One, Inc. v. Uber*

1 *Tech., Inc.*, 440 F.Supp.3d 1019, 1034-1035 (2020) (where claim first recited “a map” and then later
 2 included three references to “the map,” each “instance of ‘map’ refer to the same map,” not
 3 “different maps” because under Federal Circuit law the “antecedent basis relationship, implies that
 4 the latter instances of ‘map’ carry the same meaning as the first instance of ‘map.’”)

5 In any event, Sonos’s complaint is baseless. Its identification of the alleged “remote
 6 playback queue” has been a moving target and is now the subject of Google’s pending Motion to
 7 Strike. *See* Dkt. No. 467-9 at 7-9. Indeed, Sonos’s infringement contentions identified the “remote
 8 playback queue” as a list of media identifiers in a WatchNext message that is received by the
 9 YouTube applications and playback devices from a Watch Next or MDx server. *Id.* Yet Sonos’s
 10 opening and reply reports present a new theory that the “remote playback queue” is some list of
 11 media item identifiers stored by the “PlaylistService,” and that after transferring playback the MDx
 12 server “manages a copy of” this alleged “remote playback queue.” *Id.*; *see also* Mtn., Ex. B, ¶ 204
 13 (citing Opening Schmidt Rpt. ¶133). Dr. Bhattacharjee thus pointed out that the list of media items
 14 “managed” by an MDx server is only created after transferring playback, such that Sonos did not
 15 meet its burden to identify any actual “remote playback queue,” let alone show that it is a “remote
 16 playback queue” that is played back before transferring playback (Limitation 1.4) and after
 17 transferring playback (Limitation 1.7) as required by the claim language. Mtn., Ex. B ¶¶ 199-200.⁶

18 (c) *Google Timely Disclosed Its Non-Infringement Positions For The*
 19 *Hub Devices*

20 Sonos’s opening expert report introduced an entirely new infringement theory involving a
 21 user initiating playback on a Google Hub device using a mobile phone, and then transferring
 22 playback to a second Google Hub device thereafter. *See* Dkt. No. 467-9 (Google’s Motion to Strike)
 23 at 9-10. This completely different theory—in which the first Hub device is both a “playback device”

24 ⁶ Indeed, Sonos’s identification of the “remote playback queue” continues to move. At his
 25 deposition, Sonos’s expert, Dr. Schmidt, was evasive when asked “What is a Watch Next queue?”
 26 Ex. 22 (Schmidt Depo Tr.) at 197:14-216:10. Dr. Schmidt repeatedly referred to the Watch Next
 27 queue as a “capability provided by the cloud infrastructure,” but would not answer whether he was
 28 accusing a particular structure stored on the cloud infrastructure of being a Watch Next queue (*e.g.*,
 the BigTable referenced in his report) and could not state whether any of the source code files cited
 in his report manage the storage of the alleged “Watch Next queue.” *Id.* Given Sonos’s shifting
 positions on the meaning of “remote playback queue,” it has no basis to complain about the opinion
 in Dr. Bhattacharjee’s report.

1 and a “computing device”—was not disclosed in Sonos’s infringement contentions and is the subject
 2 of Google’s pending Motion to Strike. *Id.* Nevertheless, Dr. Bhattacharjee explained in his rebuttal
 3 report that Sonos’s new theory does not satisfy the asserted claims of the ’033 patent because a Hub
 4 Device cannot be both a “computing device” and “playback device.” Mot., Ex. B ¶¶ 187-193. Sonos
 5 now takes issue with Google having not disclosed this position earlier. Mot. at 12. But Google
 6 could not have disclosed this position earlier because Sonos did not disclose its new “phone-to-hub-
 7 to-hub” theory until it served its opening expert reports.

8 Sonos also takes issue with Dr. Bhattacharjee’s opinion that a Hub device running the YT
 9 Main app does not satisfy limitations 1.5 of the ’033 patent because it stops playback when the Cast
 10 icon is selected, such that it is not operating in a first mode where it is “configured for playback”
 11 when the Cast icon is selected (as required by limitation 1.5).⁷ Mot. at 12. But Sonos’s theories
 12 with respect to these elements were not sufficiently disclosed in Sonos’s infringement contentions.
 13 For the Hub Devices, Sonos’s contentions merely included a generic statement that “Cast-enabled
 14 displays installed with various of Google’s own Cast-enabled apps are programmed to perform this
 15 functionality, including but not limited to the YouTube and YouTube Music apps,” and then pasted
 16 two images of a Hub Device. Dkt. 468-2 at 31, 37. Sonos’s boilerplate assertion provided no
 17 explanation or disclosure of how the Hub Devices were “configured” for playback. *Id.* Thus,
 18 Google’s initial response to Sonos’s Interrogatory No. 12 identifies Limitation 1.5 as a limitation
 19 where Sonos had not met its burden of proof. Mot., Ex. J at 12.

20 Not until Sonos’s opening expert report did Sonos disclose its theory on what the term
 21 “configured” means in the context of the ’033 claims. As Dr. Bhattacharjee explained, Sonos
 22 indicated that a later limitation of the claim requiring the Hub Device to be “no longer configured
 23 for playback” was met merely because the Hub Device “stops its own playback,” without pointing
 24 to “any other configuration or de-configuration” steps. Mot., Ex. B ¶ 196. Given Sonos’s new
 25

26 ⁷ Sonos’s Motion states that it is moving to strike paragraphs relating to “limitations 1.5-1.6” and
 27 the “[YouTube] Main app,” but Sonos includes in its Motion paragraphs relating to different
 28 limitations (limitations 1.8-1.9) and different applications (the YouTube Music app). *See* Mot., Ex.
 B ¶¶ 239-41. The Court should decline to strike these paragraphs, as Sonos has not taken issue with
 Google’s disclosures related to limitations 1.8-1.9 or the YouTube Music application.

1 disclosure, Dr. Bhattacharjee opined that “the YouTube Main functionality that Sonos accuses on
 2 Hub Devices causes the Hub Device to no longer be configured for playback when displaying
 3 playback devices in much the same way that Dr. Schmidt has identified” (namely, by stopping its
 4 own playback). *Id.*

5 2. Google Timely Disclosed Its “causing storage” Noninfringement Position
 6 referenced in Dr. Schonfeld’s Report.

7 Sonos’s argument (Mot. at 13-14) regarding “causing storage” is also without merit and
 8 should be rejected. First, Google clearly disclosed that it disputed the “causing storage” claim
 9 elements in its interrogatory responses for the ‘966 patent. In response to Sonos’s first set of
 10 interrogatories, on September 7, 2021, Google disclosed its contentions that it did not meet any of
 11 the “causing storage” limitations in the asserted independent claims of the ‘966 patent. Ex. 18 at
 12 39-42. Nevertheless, Sonos argues that because Google later supplemented its interrogatory
 13 response to provide more disclosure regarding non-infringement of claim 3, which also relates to
 14 storage of a zone scene, that Google apparently did not disclose its non-infringement contentions
 15 regarding the “causing storage” limitation in the independent claims of the ‘966 patent. Mot. at 13-
 16 14. This argument is meritless. Google never disclaimed its original response, and instead
 17 incorporated by reference this response into each one of its supplemental responses. Accordingly,
 18 Google clearly disclosed its contention that the “causing storage” limitations of the independent
 19 claims of the ‘966 patent are not infringed.

20 Sonos next argues that Google’s original contentions interrogatory responses were
 21 apparently not “specific” enough. Sonos cites to no case holding that responses to non-infringement
 22 contention interrogatories required more detail, and Sonos never moved to compel more detail
 23 regarding Google’s responses. Furthermore, Sonos overlooks the fact that when Google requested
 24 Sonos’s contentions for why the asserted claims were valid over the prior art identified by Google
 25 in its invalidity contentions, Sonos “identifie[d] dozens of claim limitations” just like Sonos
 26 complains about in Google’s interrogatory response:
 27
 28

For instance, Google has failed to establish that the “Bose Lifestyle” system anticipates or renders obvious at least the following limitations of the ’966 Patent:

- [1.1] [one or more processors]
 - at least because Google has failed to establish that the “Bose Lifestyle” system embodied a “computing device” comprising “one or more processors.”

E.g., Ex. 2 (Attachment A) at 21-231. Sonos and Google should be held to the same standard for disclosure because it would be unfair if Sonos were permitted to argue during discovery that identifying claim elements as either not infringed or not met by the prior art was sufficient, and later change positions to win the sanction of striking portions of Google’s expert reports.

Finally, Sonos asserts that it “was prevented from seeking any discovery on the alleged factual bases for this new [alleged] new position” (Mot. at 14), but Sonos’s motion is completely devoid of any specificity as to the “discovery” Sonos would have propounded. Again, the “causing storage” phrase permeates other claims, as Sonos concedes, and to the extent it wanted pinpoint citations, it was free to seek clarification pursuant to the Court’s previous order. Dkt. 315.

C. Google’s Noninfringing Alternatives are Timely

1. Dr. Bhattacharjee’s Noninfringement Alternatives Were Previously Disclosed

Sonos also moves to strike Google’s non-infringing alternatives. Mot. at 15-16. But these non-infringing alternatives were clearly disclosed in Google’s interrogatory responses.

First, Limitation 1.7(i)-(iii) of the ’033 patent requires that the playback device [1] first communicate with a cloud server to obtain data identifying a next one or more media items, and [2] then use the obtained data to retrieve the media data to be played back (*see supra* § IV.B.1). Dr. Bhattacharjee opines that a non-infringing alternative available to Google would be for a playback device to simply send a request containing a playlist ID to a server (called a “Onesie agent”), and for the Onesie agent to then simply stream back the media data in the playlist. This non-infringing alternative was disclosed in Google’s response to Sonos’s Interrogatory No. 18 in which Google explained that the playback device could “send a request to a Onesie agent,” that the Onesie agent would be tasked with obtaining the media data for (i.e., audio and video content) by making “getWatchNext” and “GetPlayer” requests, and that it would then “stream the media data from the

1 **Onesie agent** to the receiver device.” Ex. 24 at 13. Put another way, Google disclosed that its
2 accused products could be modified so that a playback device sends a single request to the Onesie
3 agent that returns all of the requested media data in any alleged “remote playback queue.” Google
4 explained that this alternative would not satisfy Limitation 1.7 because playback devices would not
5 obtain and use data identifying a next one or more media item to retrieve a next media item (it would
6 simply receive media data). *Id.* Google also pointed Sonos to documents describing Google’s
7 implementation of this non-infringing alternative, which disclose the different ways it can operate
8 depending on the playback scenario. *Id.* at 13-14. For instance, they show that when playing back
9 a list of media items, the playback device can send a request that “just include[s] a playlist ID” and
10 the Onesie agent would then “determine the starting video from the playlist ID,” and obtain and
11 stream back the media content. Ex. 25 at -913; Ex. 21 ¶¶ 293, 298.

12 Sonos nevertheless argues that because Google’s response to Interrogatory No. 18
13 incorporates by reference the discussion of **Onesie and Streaming Watch** in “the opening and
14 rebuttal [showdown] reports of Dr. Bhattacharjee,” those reports are “controlling” and should limit
15 Dr. Bhattacharjee’s current opinions to a playback device sending a request to the server with an
16 identifier for each individual media item it is requesting (what Sonos calls an “item-by-item”
17 request), rather than a single request containing a playlist ID that returns media data for all the media
18 items in the playlist. Mot. at 15. This argument should be rejected. Google incorporated Dr.
19 Bhattacharjee’s showdown opinions regarding **Onesie and Streaming Watch** because they provide
20 an overview of these alternatives, the advantages these alternatives provide, their implementation
21 timelines, and identify documentation describing the alternatives. Google’s reference to the
22 showdown reports did not erase the narrative discussion Google provided earlier in its response to
23 Interrogatory No. 18. That response explicitly explained that the alternative would allow a playback
24 device to retrieve media items in the alleged “remote playback queue” without having to obtain data
25 identifying a next media item from a server that is then used to retrieve each of the media items in
26 the remote playback queue. Ex. 24 at 13-14.

27 Moreover, Dr. Bhattacharjee’s earlier showdown reports were focused on the ‘615 patent
28 and addressed a limitation that does not exist in the ‘033 patent and thus focused on a different

1 aspect of the **Onesie and Streaming Watch** operation that had nothing to do with whether a playback
 2 device sends a single request or an item-by-item request. In particular, Claim 13 of the '615 patent
 3 (that was at issue during the showdown) required that a playback device receive “resource locators”
 4 (which Sonos identified as videoIds or URLs) and multimedia content from *different* servers. *See*
 5 Mtn., Ex. U ¶ 587. In that context, Dr. Bhattacharjee discussed how with **Onesie** the same server
 6 (**called a Onesie agent**) would send URLs and multimedia content to a playback device, and that
 7 Google also had a project called Streaming Watch that extends **Onesie** so that videoIds are also sent
 8 from the **Onesie agent**. *See* Mtn., Ex. U ¶¶591-592. In short, the showdown reports provide
 9 information about the architecture of **Onesie and Streaming Watch** and the servers that send
 10 information to a playback device—they were not discussing the '033 patent or whether a single
 11 request can be used to retrieve the media data for the media items in the request.

12 **Second**, Limitation 1.8 and 1.9 of the '033 patent require that a computing device [1] be
 13 configured for playback of a remote playback queue, [2] detect an indication that playback has been
 14 transferred, and [3] after detecting the indication transition into a mode where the computing device
 15 is “no longer configured for playback of the remote playback queue.” Google’s response to Sonos’s
 16 Interrogatory No. 18 thus proposed a non-infringing alternative in which the computing device (e.g.,
 17 a mobile phone) would continue to be configured for playback of the remote playback queue, even
 18 after playback has been transferred from the computing device to a playback device. Ex. at 14.
 19 Sonos argues that Dr. Bhattacharjee’s rebuttal report includes “three additional alternatives to
 20 infringement” compared to this non-infringing alternative. This is incorrect.

21 Sonos first claims that Dr. Bhattacharjee’s opinion that this alternative would apply to “*all*
 22 of the YouTube applications” is new. Mot. at 16. But Google’s interrogatory response disclosed
 23 that this alternative applied to “Google’s accused products”; it was not limited to a particular
 24 application. Ex. 24 at 14. Indeed, while Sonos argues that Google somehow excluded YouTube
 25 Music from the scope of this non-infringing alternative, its opening expert report addressed this non-
 26 infringing alternative for YouTube Music. Ex. 3 ¶ 520.

27 Next Sonos takes issue with Dr. Bhattacharjee’s allegedly new opinion that in this non-
 28 infringing alternative playback on the computing device can be “paused” upon transfer. Mot. at 16.

1 But Dr. Bhattacharjee is merely explaining how the non-infringing alternative Google previously
 2 disclosed (i.e. that the computing device would continue to be configured for playback after
 3 transferring playback to a playback device) was further bolstered by Sonos’s expert opinions. Ex.
 4 24 at 14. Specifically, in its opening expert report Sonos argued for the first time that Google’s non-
 5 infringing alternative was not commercially acceptable because users “do not want [their] phone...
 6 outputting sound at the same time” as their playback devices. Ex. 3 ¶ 520. At the same time, in
 7 order to argue that the accused YouTube applications infringe certain limitations of the claims,
 8 Sonos’s expert took the position that “an accused YouTube application [is] ‘configured for playback
 9 of the remote playback queue’ even when it is paused and not playing back the media.” Mot., Ex. B
 10 ¶280. Thus, Dr. Bhattacharjee merely explained that if Sonos’s infringement position is credited
 11 then the computing device in this non-infringing alternative can similarly be “paused” upon
 12 transfer—such that the phone is no longer “outputting sound at the same time”—Sonos’s
 13 commercial acceptability arguments were no longer applicable. Mot., Ex. B ¶ 280; *see generally*
 14 Dkt. No. 406-2 (repeatedly stating that accused products are “configured for playback of the remote
 15 playback” without explanation).

16 Finally, Sonos claims that Dr. Bhattacharjee presents a new opinion about “video *and* audio
 17 [continuing] to play back on the mobile device after transferring playback, giving the user the option
 18 to continue playback on the mobile device or pause it at a later time.” Mot. at 16 (emphasis in the
 19 original). But Google’s interrogatory response explains that the non-infringing alternative being
 20 proposed includes “continuing playback at the control device after playback has been transferred to
 21 the playback device.” Ex. 24 at 14. While Google provided an example in which the playback
 22 continued with “only the video alone (and the audio muted),” that was but one example of the
 23 disclosed NIA (i.e., “continuing playback at the control device”). Sonos was therefore on notice of
 24 the non-infringing alternative and Dr. Bhattacharjee merely provided additional details.

25 2. Google’s “No Identification of Groups as Zone Scenes” NIA in Dr.
 26 Schonfeld’s Report is Timely.

27 Finally, Sonos’s argument that Dr. Schonfeld’s alleged noninfringing alternative, “No
 28 Identification of Groups as Zone Scenes” is untimely (Mot. at 17) elevates form over substance.

1 During summary judgment for the patent showdown, the parties disputed the definition of the term
 2 “zone scene.” *See* Dkt. 211 at 21-25; Dkt. 208 at 8-11. Subsequently, the Court ruled that to the
 3 extent a “common theme” is required by the term “zone scene,” the user must be able to name a
 4 group, and abstract or random names would not meet such a claim element. Dkt. 309 at 8. Following
 5 the Court’s order, Google supplemented its interrogatory responses, expressly incorporating the
 6 Court’s order as it relates to “zone scene” and addressing the requirement that the user must be able
 7 to name a group. *E.g.*, Mot., Ex. J, t 56-57 (“Sonos argues that a group name ‘serves as the user’s
 8 shorthand label of the common theme that led the user to create the previously-saved group,’ and
 9 therefore appears to conflate group names with the claimed ‘zone scene.’ This is contrary to the
 10 specification, which uses group naming and zone scenes separately and distinguishes between
 11 them.”); *see also* Ex. 24 at 8-11. Dr. Schonfeld’s opinion regarding this requirement follows directly
 12 from the Court’s discussion of naming a group within the context of the claims. Because the Court
 13 ruled that the ability of a user to give a meaningful name to a speaker group could sometimes count
 14 as creating a “zone scene”, Dr. Schonfeld simply opined that redesigning the products to remove
 15 the ability to name the groups would have been a straightforward and commercially acceptable
 16 alternative to using the claimed “zone scenes.” *See* Dkt. 309 at 8 (“The question, then, is simply
 17 whether a user’s ability to name speaker groups means that the user can group speakers according
 18 to a common theme. The answer is yes.”). Sonos’s suggestion that it was not put on notice of this
 19 theory months ago strains credulity. *See* Dkt. 211 at 23-24; Dkt. 309 at 7-9). Far from being
 20 prejudiced, Dr. Almeroth already addressed this NIA in his reply report. Ex. 23 at ¶¶ 268-277.
 21 Indeed, Sonos’s counsel questioned Dr. Schonfeld about these opinions during his February 3, 2023
 22 deposition, but only asked a few basic questions. Ex. 13 at 175:23-178:4.

23 **D. Sonos Cannot Show Harm From Any Alleged Lack Of Disclosures**

24 As to Sonos’s contention that certain of Dr. Bhattacharjees’ and Dr. Schonfeld’s opinions
 25 regarding noninfringement and non-infringing alternatives opinions should be stricken because they
 26 were not disclosed in Google’s interrogatory responses, Federal Rule of Civil Procedure 37 states
 27 that a failure to supplement does not require exclusion if “the failure . . . is harmless.” Fed. R. Civ.
 28 P. 37(c)(1); *see also* Committee Notes on Rules – 2000 Amendment (“[A] party should be allowed

1 to use the material that was not disclosed if the lack of earlier notice was harmless.”); *BLK*
 2 *Enterprises, LLC v. Unix Packaging, Inc.*, 2018 WL 5993839, at *2 (C.D. Cal. Oct. 2, 2018)
 3 (denying motion to strike expert report when “[d]efendants fail[ed] to demonstrate any prejudice”).

4 Even assuming *arguendo* that Google’s technical experts disclosed “new theories” in their
 5 reports (they did not), Sonos notably fails to identify any legitimate prejudice that it has suffered.
 6 Instead, it vaguely references its responses being “hampered” and to unspecified “fact discovery”
 7 that it would have apparently taken—but tellingly provides no specifics. Mot. at 17. See *S.E.C. v.*
 8 *Luna*, 2014 WL 794202, at *9 (D. Nev. Feb. 26, 2014) (declining to preclude late-disclosed theory
 9 because moving party did not “identif[y] any discovery they would have conducted had the [non-
 10 moving party] supplemented its responses sooner”).

11 This is because Sonos has been afforded robust discovery—including numerous fact
 12 depositions, multiple rounds of expert reports and discovery, millions of lines of source code, and
 13 hundreds of thousands of documents—regarding the same accused functionalities and products
 14 throughout this over-two-year litigation, such that its experts had all the necessary information to
 15 respond to any purportedly “new” theories (and did in fact do so) in their rebuttal and reply reports.
 16 It is also undisputed that Sonos was made aware of at least some of the noninfringement theories
 17 for the zone scene patents and many of the non-infringement alternatives that apply to both the
 18 showdown and non-showdown patents when the parties served expert reports for the patent
 19 showdown on June 22, 2022—such that any alleged nondisclosure was harmless. See, e.g., *supra* §
 20 IV.A.1(i) (theory that Bandid URL, not a videoId, is used to retrieve the media item for playback
 21 was included in Dr. Bhattacharjee’s showdown report). “Rule 26(e) . . . requires supplemental or
 22 corrective disclosures or responses only for ‘information [that] has not otherwise been made known
 23 to the other parties during the discovery process or in writing.’”). Sonos has also had the opportunity
 24 to serve responsive reports addressing, and to depose Google’s experts twice regarding, the very
 25 issues they now move to strike. Accordingly, Sonos cannot claim prejudice.

26 **V. CONCLUSION**

27 For the foregoing reasons, Google respectfully requests that the Court deny Sonos’s Motion.
 28

1
2 DATED: February 10, 2023

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3
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CERTIFICATE OF SERVICE

Pursuant to the Federal Rules of Civil Procedure and Local Rule 5-1, I hereby certify that, on February 10, 2023, all counsel of record who have appeared in this case are being served with a copy of the foregoing via the Court's CM/ECF system and email.

DATED: February 10, 2023

By: /s/ Charles K. Verhoeven
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